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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,199	08/06/2003	Michael J. Hind	Y0R920020048US1 (13310)	8332
23389	7590	01/25/2008	EXAMINER	
SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530			WOOD, WILLIAM H	
ART UNIT		PAPER NUMBER		
2193				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/635,199	HIND ET AL.
	Examiner	Art Unit
	William H. Wood	2193

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 25 October 2007.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-8 and 10-17 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-8 and 10-17 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.



WILLIAM WOOD
PRIMARY EXAMINER

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date 20071011

5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

Claims 1-8 and 10-17 are pending and have been examined.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As amended the claim jumps from step (a) to step (c), and is thus unclear.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-8 and 10-17 are rejected under 35 U.S.C. 102(a) as being anticipated by **Arnold, M.**, "Online Profiling and Feedback-Directed Optimization of JAVA".

Claim 1

Arnold discloses a method for normalizing a profile collected for an executing application to account for one or more actions applied to the executing application after the profile was collected, the method comprising:

- (a) predicting, based on the profile and one or more actions, an impact on the executing application of applying the one or more actions to the executing application (*page 72, lines 2-5; page 73, 4-5; page 77, lines 2-8; additionally page 73, lines 16-22, “branch probabilities”; page 73, line 23 to page 74, line 1, “approximate reasonable edge counts throughout compilation”*); and
- (b) adjusting the profile to form a normalized profile according to the predicted impact (*page 72, line 24 - page 73, line 6, page 75, figures 5.3 and 5.4*).

Claim 2

Arnold discloses a system for normalizing a profile collected for an executing application to account for one or more actions applied to the executing application after the profile was collected, the system comprising:

a predictor for predicting, based on the profile and the one or more actions, an impact on the executing application of applying the one or more actions to the executing application (*page 72, lines 2-5; page 73, 4-5; page 77, lines 2-8; additionally page 73, lines 16-22, “branch probabilities”*); and

an adjuster for adjusting the profile to form a normalized profile according to the predicted impact (*page 72, line 24 - page 73, line 6, page 75, figures 5.3 and 5.4*).

Claim 3

Arnold discloses a method for adjusting a profile collected for an executing application to account for one or more actions applied to the executing application to improve detection of phase shifts in the executing application after the profile was collected, the method comprising:

- (a) collecting a first profile for the executing application (*page 72, lines 2-5; page 73, 4-5; page 77, lines 2-8; additionally page 73, lines 16-22, "branch probabilities"*);
- (b) predicting, based on the profile and the one or more actions an impact on the executing application of applying the one or more actions to the executing application (*page 72, lines 2-5; page 73, 4-5; page 77, lines 2-8; additionally page 73, lines 16-22, "branch probabilities"*);
- (c) adjusting the first profile to form a normalized profile according to the predicted impact (*page 72, line 24 - page 73, line 6, page 75, figures 5.3 and 5.4*);
- (d) applying the one or more actions to the executing application (*page 72, lines 2-5; page 73, 4-5; page 77, lines 2-8; additionally page 73, lines 16-22, "branch*

probabilities");

(e) collecting a second profile for the executing application (*page 72, line 24 - page 73, line 6*); and

(f) detecting a phase shift in the executing application by utilizing the normalized profile and the second profile (*page 72, line 24 - page 73, line 6*).

Claims 4, 7 and 8

The limitations of claims 4, 7 and 8 substantially correspond to the limitations of claims 1-3 and as such are rejected in a corresponding manner.

Claim 10

Arnold discloses the method of claim 1, wherein the step of predicting is performed using a cost-benefit model (*page 11, first line under "Controller Model"; page 68, section 5.3.1, first paragraph*).

Claim 15

Arnold discloses the method of claim 3, wherein the step of predicting is performed using a cost-benefit model (*page 11, first line under "Controller Model" ; page 68, section 5.3.1, first paragraph*).

Claim 16

Arnold discloses the method of claim 3, further including:

selecting the one or more actions for applying to the executing application
(*page 11, first line under "Controller Model"; page 72, lines 2-5; page 73, 4-5; page 77, lines 2-8; additionally page 73, lines 16-22, "branch probabilities"*).

Claim 17

Arnold discloses the method of claim 16, wherein the step of selecting is performed using a cost-benefit model (*page 11, first line under "Controller Model" ; page 68, section 5.3.1, first paragraph*).

Response to Arguments

Applicant's arguments with respect to claims 1-8 and 10-17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the

advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Correspondence Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Wood whose telephone number is (571)-272-3736. The examiner can normally be reached 10:00am - 4:00pm Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571)-272-3756. The fax phone numbers for the organization where this application or proceeding is assigned are (571)273-8300 for regular communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR systems, see <http://pair-direct.uspto.gov>. For questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.



WILLIAM WOOD
PRIMARY EXAMINER
William H. Wood
Patent Examiner
AU 2193
January 18, 2008